

**MAY 24 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN MONTENEGRO CRUZ,

Defendant - Appellant.

No. 05-10314

D.C. No. CR-03-00707-RCC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
Raner C. Collins, District Judge, Presiding

Submitted May 17, 2006<sup>\*\*</sup>  
San Francisco, California

Before: RYMER and WARDLAW, Circuit Judges, and ALSUP<sup>\*\*\*</sup>, District  
Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable William Alsup, United States District Judge for the Northern District of California, sitting by designation.

John Montenegro Cruz appeals his conviction for possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). We affirm.

The district court's factual finding that the state prosecutor made no promise with respect to future federal charges was not clearly erroneous. *See United States v. Clark*, 218 F.3d 1092, 1095 (9th Cir. 2000). Even if a promise had been made though, it would not be an enforceable bargain because "[s]tate agents are without authority to bind federal proceedings." *Johnson v. Lumpkin*, 769 F.2d 630, 634 (9th Cir. 1985). We have never held that due process requires a state prosecutor to inform a defendant of pending federal charges, and we decline to do so today, especially since the "bargain" in this case occurred outside the plea context and the federal investigation was not even underway. *See United States v. Krasn*, 614 F.2d 1229, 1234 (9th Cir. 1980).

Nor did the district court abuse its discretion when it refused to exercise its supervisory powers and dismiss the indictment. There was no misconduct on the part of the federal prosecutor, and our supervisory powers do not extend over state officials acting in a non-federal capacity. *See Stewart v. Corbin*, 850 F.2d 492, 500 (9th Cir. 1988).

**AFFIRMED**